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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054617
Party	Defendant Y.Z.Y., INC.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 3,504,398
for the mark BIO CLAIRE registered September 23, 2008.

NOUVELLE PARFUMERIE GANDOUR,

Petitioner,

v. Cancellation No. 92054617

Y.Z.Y., INC.

Respondent.
_____/

RESPONDENT Y.Z.Y., INC.'S MOTION TO DISMISS PETITION FOR CANCELLATION FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

COMES NOW, the Respondent, Y.Z.Y., INC. ("YZY"), who respectfully moves the Trademark Trial and Appeal Board ("Board") for an order dismissing the Petition for Cancellation ("Petition") for failure to state a claim for which relief may be granted. Fed.R.Civ.P. 12 (b)(6); TBMP 503. The Petition does not allege facts sufficient to establish standing by Plaintiff, NOUVELLE PARFUMERIE GANDOUR ("GANDOUR"), to assert its claim. As grounds therefore, YZY states and argues as follows:

1. The Petition does not allege that GANDOUR has used BIO CLAIRE ("the Mark") on any goods in the United States prior to YZY's use of it on the subject goods in the United States. GANDOUR also does not allege that it has used the Mark on any goods in this country at anytime.

2. The Petition alleges, in part, that GANDOUR has used the Mark "on or around February 2001 in the Ivory Coast and Cameroon...[and] was registered in Cameroon through the

African Intellectual Property Organization (OAPI) effective August 30, 2002, claiming first use in 2001." Pet. ¶2.

3. The Petition alleges that YZY began using the Mark in the United States in 2001. Pet. ¶3.

4. Use of a mark outside the United States is irrelevant to GANDOUR's claim of right to ownership of the Mark in the United States. *See Scotto v. Mediterranean Importing Co., Inc.*, 102 USPQ 415 (TTAB 1969).

5. "In order to withstand [a motion to dismiss for failure to state a claim], a complaint need only allege such facts as would, if proved, establish that the plaintiff is entitled to the relief sought, that is, that (1) the plaintiff has standing to maintain the proceeding...." TBMP 503.02

6. To survive a motion to dismiss, the Petition must be plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007). Here, the Petition is not plausible on its face because GANDOUR has alleged no ownership right to the Mark in the United States.

7. "The purpose in requiring standing is to prevent litigation where there is no real controversy between the parties, where a plaintiff, petitioner or opposer, is no more than an intermeddler." *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1028-29, 213 USPQ 185 (C.C.P.A. 1982). GANDOUR alleges no cognizable right to the Mark in the United States, and is merely an intermeddler. There is no pleading allegation in the Petition that makes a claim greater than that which can be asserted by the general public, because GANDOUR has not alleged prior use of the Mark in the United States. Accordingly, GANDOUR lacks standing and the motion should be granted *See id*. at 1028 citing *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972).

WHEREFORE, YZY respectfully moves the Board for an order granting the motion, and dismissing the Petition for failure to state a claim upon which relief may be granted.

Respectfully submitted,

/s/Richard S. Ross, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Postal Service first class regular mail, and addressed to counsel for the Petitioner:

Scott R. Austin, Esq.
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Miami, Florida 33131

this 13th day of January, 2012.

/s/Richard S. Ross, Esq.
Richard S. Ross, Esq.